

## SUGGESTED ELEMENTS FOR A MOTION FOR COMPENSATION CLAIM IN EXCESS OF THE STATUTORY CASE COMPENSATION MAXIMUM

*Reminder: The statutory maximum amount applies to fees for in- and out-of-court time only, **not** the total of the voucher, which includes expenses.*

Paragraph 2.22 C. (2) of the *Guidelines for the Administration of the Criminal Justice Act (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, provides:

In any case in which the total compensation claimed is in excess of the statutory case compensation maximum, counsel shall submit with the voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case and that the excess payment is necessary to provide fair compensation.

Paragraph 2.22 B. (3) of the *CJA Guidelines* states that a case is complex if the "legal or factual issues . . . are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case," and that a case is **extended** if "more time is reasonably required for total processing than the average case." Paragraph 2.22 B. (3) lists the following criteria as useful in determining **fair compensation** in extended or complex cases: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

►►► **In our court, in lieu of the "memorandum" referred to in the *CJA Guidelines*, a motion must be filed requesting approval of the excess amount and outlining the reasons why such excess amount is justified. See LCrR 44.1(c).**

To assist counsel in preparing such motion, the following topics are provided for consideration. Some of these issues may not apply to a particular case or may not be noteworthy for this motion. Counsel, of course, may address topics other than those listed below.

- ▶ Length of appointment to case; total number of in-court hours, specifying pretrial hearings, trial, sentencing hearings, and other; and total number of out-of-court hours.
- ▶ Offenses charged; number of counts charged; and other pending cases of defendant during the representation.
- ▶ Number of co-defendants.
- ▶ The sentencing guideline range found by the court and whether a mandatory minimum was found or at issue at sentencing.
- ▶ Discovery materials (nature and volume) and/or discovery practices.
- ▶ Motions, legal memoranda, jury instructions, and sentencing documents, or legal research not resulting in such, which were drafted originally for this case (do not include standardized motions, etc., unless content was modified significantly).
- ▶ Investigation and case preparation (e.g., number and accessibility of witnesses interviewed, record collection, document organization).
- ▶ Investigative, expert, or other services (CJA 21 voucher).
- ▶ The following client considerations: communication with client/family, language difference, accessibility of client, other.
- ▶ Any expense (see Item 17, 18 of the CJA 20 voucher) greater than \$500.
- ▶ Any other noteworthy circumstances regarding the case and the representation provided to support this compensation request. Include, if applicable: negotiations with the U.S. Attorney's office or law enforcement agency; complexity or novelty of legal issues and factual complexity; responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed, and the knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and hardship or injury resulting from the representation; any extraordinary pressure of time or other factors under which services were rendered.